

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 11,13-20,27** are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

This method is directed to purely mental steps and would not qualify as a statutory process. To qualify as a 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, e.g. by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, e.g. by identifying the material that is being changed to a different state. Therefore, according to *In re: Bilski*, this method is not a patent eligible process under 101.

Allowable Subject Matter

3. **Claims 1,3-10,21,23-26,28** are allowed.
4. The following is a statement of reasons for the indication of allowable subject matter:

With regard to claims 1 and 21, the prior art of record fails to anticipate or make obvious "... progressively reduces said retransmission data rate to at least one of *two or more lower retransmission data rates only for said current frame* if an acknowledgement is not received *for a current frame* after *n attempts* of transmission at said transmission data rate, wherein a second lower retransmission data rate is selected if an acknowledgement is not received *for a current frame* after *m attempts* of retransmission at a first lower retransmission data rate, wherein m equals a maximum number of attempts parameter corresponding to said first lower retransmission data rate, wherein m and n are integers, and wherein m and n are greater than one" (with emphasis).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLANCHE WONG whose telephone number is (571)272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2476

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blanche Wong/
Examiner, Art Unit 2476
November 18, 2009